

# BOND

## IMMIGRATION INFORMATION MEMO

AUGUST 1, 2023

## Employer Reminder: New I-9 Form and Alternative Inspection Procedure Go Into Effect on August 1

Two new rules related to I-9 compliance -- just announced last week -- go into effect on Aug. 1, 2023. First, on July 24, 2023, the Department of Homeland Security (DHS) issued a new rule allowing an alternative procedure to physical inspection of identity and employment authorization documents for I-9 verification for certain employers, which goes into effect on August 1. Then, on July 25, DHS announced a new version of Form I-9, Employment Eligibility Verification, that will be published and go into effect on Aug. 1, 2023.

### Remote Inspections of I-9 Documents

Starting on March 20, 2020, in response to the COVID-19 pandemic, U.S. Immigration and Customs Enforcement (ICE) allowed remote, rather than in-person physical, verification of Form I-9 documents for certain employees. This relaxed I-9 inspection policy permitted document verification by video link, fax or email until the affected employees began “non-remote employment on a regular, consistent or predictable basis:” or until the end of flexibilities on July 31, 2023, whichever was earlier.

On May 4, 2023, ICE [announced](#) that the temporary COVID-19 flexibilities for Form I-9 compliance allowing for remote inspections of I-9 form documents would expire on July 31, 2023. Therefore, starting on Aug. 1, 2023, employers must return to physically inspecting I-9 documents for new hires and for re-verification. Also, by Aug. 30, 2023, employers must perform in-person, physical inspections of identity and employment eligibility documents of employees whose documents were inspected remotely during the temporary flexibility period from March 20, 2020 to July 31, 2023. For employees who continue to work remotely, an employer may use an authorized representative to complete in-person, physical verification of I-9 documents on the employer’s behalf.

### Alternative Procedure for I-9 In-Person Physical Document Inspection

On July 24, 2023, ICE issued regulations for an alternative inspection procedure to physical inspection of I-9 documents for certain employers. This Alternative Procedure is available only to E-verify participants in good standing, defined as any employer who: (1) has enrolled in E-Verify with respect to all hiring sites in the United States for which it intends to use the Alternative Procedure; (2) is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and (3) continues to be enrolled and a participant in good standing in E-Verify at any time during which the employer uses the Alternative Procedure.

The Alternative Procedure is as follows:

A qualified employer (or an authorized representative acting on such an employer’s behalf, such as a third-party vendor) who chooses to use the Alternative Procedure must, within three business days of an employee’s first day of employment:

1. Have the employee transmit a copy of the I-9 documents to the employer;
2. Examine copies (front and back, if the document is two-sided) of Form I-9 documents submitted by the employee to ensure that the documentation presented reasonably appears to be genuine;
3. Conduct a live video interaction with the individual during which the individual presents the same document(s) previously transmitted to the employer to ensure that the documentation reasonably appears to be genuine and related to the individual.
4. Indicate on the Form I-9, by completing the corresponding box, that an Alternative Procedure was used to examine documentation to complete Section 2;
5. Retain a clear and legible copy of the documentation (front and back if the documentation is two-sided); and
6. In the event of a Form I-9 audit or investigation by a relevant federal government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee for document examination in connection with the employment eligibility verification process.

A qualified employer enrolled in E-Verify may use this Alternative Procedure starting on Aug. 1, 2023 for all new hires and to comply with its obligation to physically inspect by Aug. 30, 2023 of all employees for whom it conducted remote document inspections during the period from March 20, 2020 through July 31, 2023. To use the Alternative Procedure for remote inspections that occurred from March 20, 2020 through July 31, 2023, the employer must have been enrolled in E-Verify at the time of those inspections.

An employer need not use the Alternative Procedure for all of its employees but must be consistent in the manner in which it uses the Alternative Procedure and do so in a non-discriminatory manner. For instance, if an employer chooses to offer the Alternative Procedure to some employees at an E-Verify hiring site, that employer must do so consistently for all employees at that site. However, a qualified employer may choose to offer the Alternative Procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on a protected characteristic.

### **New I-9 Form**

On Aug. 1, 2023, DHS will publish a new Form I-9 that will replace the current I-9 form. The new Form I-9 should be used immediately, but there is a grace period until Oct. 31, 2023 for an employer's continued use of the current I-9 Form. Thus, beginning Nov. 1, 2023, only the Form I-9 dated 8/01/23 may be used. The following are the main revisions contained in the new Form I-9:

- Reduces Sections 1 and 2 to a single-sided sheet;
- Designed to be a fillable form on tablets and mobile devices;
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary;

- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or reverification is required;
- Revises the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization;
- Reduces Form instructions from 15 pages to 8 pages; and
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination.

### **Compliance**

If you would like assistance with the new Form I-9 inspection rules or have any questions regarding the information contained in this client alert, please contact [Alice B. Stock](#) or the attorney at the firm with whom you are in regular contact.

